

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-336-C

| | | | |
|--------|--|---------------------------------|-----------------------------|
| IN RE: | Application of Common Point, LLC for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services within the State of South Carolina and for Alternative and Flexible Regulation |))))))) | SETTLEMENT AGREEMENT |
|--------|--|---------------------------------|-----------------------------|

This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Common Point, LLC ("Common Point" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, on August 17, 2011, Common Point filed its Application requesting: (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide facilities based and resold local exchange (including exchange access) and interexchange services; (ii) flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iii) that interexchange service offerings be regulated in accordance with procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Public Service Commission of South Carolina ("Commission") Order No. 2001-997 in Docket No. 2000-407-C; (iv) waiver of Regulation 103-610 regarding location of records; and (v) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts ("USOA");

WHEREAS, on August 24 and September 30, 2011, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS on August 25, 2011, the Commission issued a Notice of Filing and Hearing and established a return date of September 27, 2011, for the filing of letters of protest or petitions to intervene and established a hearing date of November 14, 2011 for the Application to be heard before a hearing examiner;

WHEREAS, on September 15, 2011, the Commission issued its Order No. 2011-616 by which the Commission appointed B. Randall Dong, Esquire as the Hearing Examiner in this matter;

WHEREAS, on September 27, 2011, South Carolina Telephone Coalition ("SCTC") filed a petition to intervene and later filed a stipulation on October 14, 2011;

WHEREAS, on October 3, 2011, the Company filed the direct testimony of Joseph O'Hara with the Commission;

WHEREAS, the purpose of this proceeding is to review the Application filed by the Company and its requests: (i) for a Certificate of Public Convenience and Necessity to provide facilities based and resold local exchange (including exchange access) and interexchange services within the State of South Carolina; (ii) for flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iii) for waiver of Regulation 103-610 regarding location of records, and (iv) for waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical and managerial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed the financial statements of Common Point filed as Exhibit 3 to the Application;

WHEREAS, ORS calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, ORS has reviewed the pre-filed testimony of Joseph O'Hara;

WHEREAS, as a result of its investigations, ORS has determined: (a) the Company requests authority to offer facilities based and resold local services (including exchange access) and long distance services but has no present intention of offering retail residential local exchange services; (b) the Company's officers appear to possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, the Company appears to have access to sufficient financial resources necessary to provide the services proposed in its Application; (d) the Company's proposed tariffs set forth in Exhibit 4 to its Application with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (e) the services provided by the Company will meet the service standards required by the Commission; (f) the provision of services by the Company will not adversely impact the availability of affordable telecommunications services; (g) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; and (h) the provision of local services by the Company will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket and

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that Common Point's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness Joseph O'Hara without cross-examination by ORS;

3) The Company submitted financial data, which was provided as Exhibit 3 to its Application, and which financial data is incorporated by reference;

4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide facilities based and resold local exchange (including exchange access) services and interexchange services subject to the terms and conditions contained herein within the state of South Carolina;

5) Regulation 103-612.2.3 provides that the Commission and ORS shall maintain updated maps showing Commission approved areas and/or exchange service area(s). The Company has not provided ORS an operating area map;

6) To the extent the Company offers retail local exchange service in the future, the Company agrees it is responsible for having the name, address, and telephone numbers of all of its customers listed in a telephone directory that is published at regular intervals, except those unlisted at customer's request;

7) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2010) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in Illinois, and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2010) or § 58-9-1070 (Supp. 2010). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

8) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA"). The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2010) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require

every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund ("USF"), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs as but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

9) ORS does not oppose the Company's requests: (a) for flexible regulation for its local telecommunications service offerings consistent with Order No. 98-165 in Docket No. 97-467-C, such flexible regulation including specifically (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days; and (b) for alternative regulation of its interexchange service offerings consistent with the procedures described and set forth in Orders 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) removal of the maximum rate tariff requirements for the Company's business services, private line, and customer network-type offerings, except in instances governed by Order No. 2001-997 which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (ii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the

investigation or until further order of the Commission; and (iii) grant Common Point the same treatment as all other carriers operating under alternative regulation in connection with any future relaxation of reporting requirements;

10) The Company agrees to resell the services only of those local exchange providers authorized to do business in South Carolina by the Commission; and if the Company provides local services in the future, the Company shall utilize only those carriers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, if Common Point changes its underlying carriers;

11) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Common Point. The Parties agree that such reports shall be filed pursuant to ORS's instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission requirements;

12) The Company agrees to maintain its books and records associated with its South Carolina operations in a manner that would permit ORS to examine any of Common Point's reports filed with the Commission and provided to ORS;

13) The Company agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order;

14) In the event that the Company offers prepaid calling card or prepaid long distance services in the future, Common Point agrees that it shall obtain Commission approval and post a surety bond in the amount of \$5,000 as required by the Commission;

15) In the event that the Company offers Residential retail local exchange services in the future, the Company will comply with South Carolina Regulation 103-607 in that it will obtain a bond, irrevocable letter of credit, or certificate of deposit or obtain a waiver of South Carolina Regulation 103-607;

16) The Company agrees to comply with South Carolina Code Ann. § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, Common Point agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

17) To the extent necessary, the Company agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

18) The Company agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," also known as 911 services." At the time the Company offers or provides any service that would implicate Title 23, Chapter 47, the Company agrees to contact the appropriate authorities regarding 911 services in the counties and cities where it will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding the Company's operations;

19) The Company agrees to comply with all orders, directives, guidelines, rules and regulations of the Commission unless the Commission has expressly waived such requirement, rule or regulation;

20) The Company agrees to file a final revised tariff with both the ORS and the Commission within thirty days of the Commission Order granting certification, and the revised tariff shall reflect and be in accordance with ORS's recommendations as set forth in Attachment 1 to this Settlement Agreement. Further, the Company agrees to file and maintain its tariff with the Commission electronic tariff filing system;

21) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

22) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the

Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein;

23) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

24) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation;

25) This Settlement Agreement shall be interpreted according to South Carolina law;

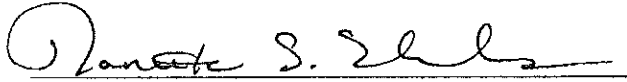
26) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement

and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

[SIGNATURES ON FOLLOWING PAGES]

WE AGREE:

Representing the South Carolina Office of Regulatory Staff

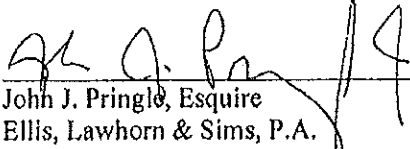


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Telephone: (803) 737-0575
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Email: nsedwar@regstaff.sc.gov

11/8/11
Date

WE AGREE:

Representing Common Point, LLC



John J. Pringle, Esquire
Ellis, Lawhorn & Sims, P.A.

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11/8/2011

Date



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DANIEL ARNETT
CHIEF OF STAFF

August 23, 2011

John J. Pringle
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC 29202-2285

RE: Application of Common Point, LLC for a Certificate of Public
Convenience and Necessity to Provide Local Exchange and
Interexchange Services (Docket No. 2011-336-C)

Dear Mr. Pringle,

The South Carolina Office of Regulatory Staff has reviewed the Common Point, LLC
Proposed Tariff No. 1 that was filed with the South Carolina Public Service Commission
on August 17, 2011.

Included in the attachment are recommendations for the tariff that will enable it to
conform to the typical South Carolina Telecommunications Tariff. Also included are
recommendations for additions or deletions in your tariff that will aid in the timely
approval of the tariff.

Please do not hesitate to respond via e-mail or phone. And, as always, if you do have any
questions, please contact me.

Sincerely,

Tom Allen
Tariff Administrator
South Carolina Office of Regulatory Staff
803-737-5229
tallen@regstaff.sc.gov

Recommendations for Common Point LLC Tariff No. 1

Original Sheet No. 6 1.2—The Company should add the following language to the end of the paragraph—“The Company will notify the Commission of these promotional offerings in accordance with Commission Regulations.”

Original Sheet No. 15 2.3.3—The Company should add the following language to the end of the paragraph—“The return check charge will be consistent with SC Code Ann. § 34-11-70.”

Original Sheet No. 18 2.6—The Company should update the ORS address as follows:

SC Office of Regulatory Staff
Consumer Services Division
1401 Main Street, Suite 900
Columbia, SC 29201
(803) 737-5230
1-800-922-1531 (toll free)

Original Sheet No. 42 5.1-- If the Company does provide services other than ICB, the Company will file tariff revisions to reflect the current rates. In addition, if the Company will provide services to residential customers, the Company will file both current and maximum rates for the services provided.

Original Sheet No. 43 5.2.1-- If the Company does provide services other than ICB, the Company will file tariff revisions to reflect the current rates. In addition, if the Company will provide services to residential customers, the Company will file both current and maximum rates for the services provided.

Original Sheet No. 44 5.2.2 and 5.2.3-- If the Company does provide services other than ICB, the Company will file tariff revisions to reflect the current rates. In addition, if the Company will provide services to residential customers, the Company will file both current and maximum rates for the services provided.

Original Sheet No. 45 5.2.3-- If the Company does provide services other than ICB, the Company will file tariff revisions to reflect the current rates. In addition, if the Company will provide services to residential customers, the Company will file both current and maximum rates for the services provided.

Original Sheet No. 46 5.2.4 and 5.2.5-- If the Company does provide services other than ICB, the Company will file tariff revisions to reflect the current rates. In

addition, if the Company will provide services to residential customers, the Company will file both current and maximum rates for the services provided.

Additional Recommendations for the Local Exchange Tariff

- 1) If the Company charges any installation, connection, maintenance, or termination charges, etc. (in addition to the services listed in the tariff), these additional charges and the descriptions of the charges should be listed in the tariff with their current and maximum rates.
- 2) The Company should also provide tariffs and tariff revisions to the South Carolina Public Service Commission as well as the South Carolina Office of Regulatory Staff (26 S.C. Code Regs. 103-629).
- 3) The Company will be required to file a bond in order for the Company to comply with 26 S.C. Code Regs. 103-607.
- 4) If the Company's Services involve Prepaid Calling Cards, the Company will be required to post a \$5, 000 Surety Bond with the Public Service Commission.
- 5) The Company is applying for Flexible Regulation. Therefore, the Company will include maximum rates as well as current rates for all Local Exchange and Exchange Access services within the Tariff that are not exclusively "ICB."
- 6) The Company is applying for Modified Alternate Regulation by the PSC for its Interexchange Services. As a general rule, the Company should include maximum rates and current rates for any service that may impact residential customers. Any service that impacts Business Long Distance, Consumer Cards, and Operator Services (Including Directory Assistance) are exempt from maximum rates. Only current rates would need to be filed for these services.
- 7) The Company should include language as it relates to Marketing Practices (SC PSC Order No. 95-658).

As a telephone utility under the regulation of the Public Service Commission of South Carolina, the Company hereby asserts and affirms that as a reseller of intrastate telecommunications service, the Company will not indulge or participate in deceptive or misleading telecommunications marketing practices to the detriment of consumers in South Carolina, and the Company will comply with those marketing procedures, in any, set forth by the Public Service Commission. Additionally, the Company will be responsible for the marketing practices of its contracted telemarketers for compliance with this provision. The Company understands that violation of this provision could result in a Rule to Show Cause as to the withdrawal of its certification to complete intrastate telecommunications traffic within the state of South Carolina. (Commission Order 95-658)

IN RE: Application of Common Point, LLC for a
Certificate of Public Convenience and
Necessity to Provide Local Exchange and
Interexchange Telecommunications Services
within the State of South Carolina and for
Flexible Regulation and for Alternative
Regulation

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**CERTIFICATE OF
SERVICE**

November 8, 2011
Columbia, South Carolina